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2. Criminal Law—Trial—Reception of Evidence—Election between Acts Proved.—In a prosecution for the unlawful sale of intoxicating liquor, where several distinct acts were proved, the state should be required to elect on which act it would rely for conviction before the defense is required to introduce its evidence.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 14, Criminal Law, §§ 1580-1583.]

HARRISONBURG HARNESS CO. *v.* NATIONAL FURNITURE CO. et al.

Dec. 6, 1906.

[55 S. E. 679.]

Fraudulent Conveyances—Actions—Evidence—Sufficiency—General Rules.—Fraud as against creditors in the sale of property must be clearly and distinctly proved, and cannot be assumed on doubtful evidence or circumstances of suspicion, or from the fact that the dealing was not perfectly clear.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 24, Fraudulent Conveyances, § 867.]

WILLIAMS *v.* VIRGINIA STATE INS. CO.

Dec. 6, 1906.

[55 S. E. 680.]

Insurance—Fire Insurance—Policies—Construction.—An insurer issued two fire policies at different times, one insuring a building and one insuring chattels' therein. Each policy provided that it should be void in case of any false swearing by the insured "relating to this insurance, or the subject thereof." Held, that false swearing as to one policy did not vitiate the other.

SEWARD & CO. *v.* MILLER & HIGDON.

Dec. 6, 1906.

[55 S. E. 681.]

1. Carriers—Bill of Lading—Transfer—Effect—Attachment.—The consignee of fruit, who was the shipper's agent, sold the same while in transit and drew a draft for the price, which he attached to an order on the carrier for delivery as authorized by the bill of lading. The draft was discounted by a bank, and after the fruit was rejected by the purchaser, the consignee's agent resold it to another, who agreed to pay the draft; but, before he did so, the fruit was attached as the property of the consignee. Held, that the bank, on discounting the draft, became the owner of the fruit until payment,

and was vested with the rights of a mortgagee in possession as against the attaching creditors.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 9, Carriers, §§ 179-190.]

2. Same—Record.—Where a bank discounted a draft attached to an order on a carrier for the delivery of freight, it was not necessary that it should have the papers recorded, as provided by Code, § 2465, in order to preserve its lien.

3. Same—Rights of Purchaser.—A consignee of certain fruit, after selling the same, drew a draft, attached to an order on the carrier for delivery thereof, which draft was discounted by a bank. The purchaser having refused the fruit on arrival, the consignee's agent sold the fruit to another, who agreed to pay the draft, but did not do so until an attachment was levied on the fruit as the property of the consignee. Held that, though the consignee's agent had no authority to sell the fruit after discounting the draft, the acceptance by the bank of payment of the draft from the second purchaser transferred to him all the bank's rights to the property.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 9, Carriers, §§ 179-190.]

4. Attachment—Attaching Creditors—Rights.—An attaching creditor can acquire through his attachment no higher or greater rights to the property attached than the defendant had when the attachment was levied, in the absence of fraud or collusion by which the attaching creditor's rights are impaired.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 4, Attachment, §§ 518-534.]

BROWN *v.* HOWARD & WHITEHEAD.

Dec. 6, 1906.

[55 S. E. 682.]

Appeal—Right of Review—Persons Entitled—Interest in Subject.—Under Va. Code 1904, § 3454, authorizing a person thinking himself aggrieved by a decree to appeal therefrom, etc., a commissioner, appointed in a decree directing a resale of land in a suit to subject the assets of the deceased owner to the payment of debts, cannot in his official capacity alone appeal from a decree setting aside the decree for a resale, rendered on a petition against himself alone.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 2, Appeal and Error, §§ 939-942.]

VASHON *v.* BARRETT et al.

June 14, 1906.

[54 S. E. 705.]

1. Equity—Pleading—Answer under Oath—Evidence.—A bill in a